

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.37799 of 2003
& WPMP.Nos.45919 & 45920 of 2003

P.Ramasamy

...Petitioner

-Vs-

1.Deputy Commissioner of Labour
Authority under the Workmen
Compensation Act,
Coimbatore.

2.K.Ganeshan

3.Minor Mahudeswari C/o. K.Ganeshan

4.Minor Sathish kumar C/o. K.Ganeshan

5.K.Palanichamy

6.Basheer

7.Tahsildhar

(Revenue Recovery Authority)
Palani.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent made in I.A.No.52/03 filed in W.C.No.118/98, dated 04.12.2003 and quash the same and direct the first respondent to restore the W.C.No.118/98 and hear the same on merits.

For Petitioner : Mr.S.Silambanan, SC
for Mr.N.Umapathi

For Respondents 1 & 7 : Mr.M.Elumalai, GA

O R D E R

The prayer sought for in this writ petition is for a writ of Certiorarified Mandamus to call for the records of the first respondent made in I.A.No.52 of 2003 filed in W.C.No.118 of 1998, dated 04.12.2003 and quash the same and direct the first respondent to restore the W.C.No.118 of 1998 and hear the same, on merits.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows:

2.1. The petitioner claims that he is an agriculturist having few acres of land in Palani Taluk and at the time of filing of this writ petition, the petitioner was 70 years old. During the paddy harvesting season in November 1997, he hired a thrashing machine belonging to the 5th and 6th respondents herein and it was put in use in the open field. During that time one Mrs.Palaniammal, wife of the second respondent and mother of the 3rd and 4th respondents herein as a passerby intended to take a short cut, went right through the field of the petitioner and while she was crossing, as out of curiosity it seems that she had gone nearer to the thrashing machine and it seems that she got squat into the machine at about 5.00p.m. In this incident Mrs.Palaniammal, sustained grievous injuries and was hospitalised and died on 22.11.1997.

2.2. In the said incident though the said Palaniammal, is only a passerby and she voluntarily went nearer to the thrashing machine and trapped herself which became the fatal for her, the legal heirs of the said deceased Palaniammal, filed a workmen compensation case in W.C.No.118/98 and it revealed that the first respondent seeking compensation from the petitioner.

2.3. On receipt of notice in the workmen compensation proceedings, the petitioner had entrusted the case to a local advocate and thereafter, the petitioner had not received any communication from his counsel. Suddenly, the petitioner received a communication from the authorities of Revenue Recovery Proceedings, i.e., 7th respondent, who called upon the petitioner to pay a sum of Rs.1,63,683/- as awarded by the first respondent on 30.06.2000 in the said workmen compensation case. Thereafter, the petitioner took steps and perused the copy of the order in W.C.No.118/98 and it was revealed that the first respondent therein, i.e., the petitioner had not filed any counter and have not participated in the proceedings and therefore, set ex-parte and accordingly, an ex-parte order was passed directing the petitioner to pay the said compensation.

2.4. Aggrieved over the said ex-parte order, the petitioner had filed petition to set aside the said ex-parte order stating that if a chance is given to the petitioner, he will prove that the deceased Palaniammal was not at all an employee of the petitioner and therefore, she would not be entitled to claim any compensation under the provision of the Workmen Compensation Act.

2.5. It is further submitted by the petitioner that, from the court diary of the first respondent, it was found that the order of setting ex-parte of the petitioner itself was made on

18.11.1997. A perusal of the said court diary dated 18.11.1997 shows that, all present and on 29.01.2000 it says 'arguments' and on 30.06.2000 it shows all present. When the word 'all present' has been recorded in the court diary, it cannot be presumed that the petitioner or his counsel was not present on that day and accordingly the very order setting the petitioner exparte before the first respondent forum was not possible and therefore, he filed the petition for restoration.

3. Though the said petition was filed by the petitioner, the same was not entertained by the first respondent. Therefore, the petitioner was constrained to file the W.P.No.32986 of 1983 before this Court wherein, he sought for a mandamus and accordingly, a direction was given by this Court to dispose the unnumbered interlocutory application on or before a particular date. Thereafter, the said interlocutory application was numbered as I.A.No.52 of 2002 in W.C.No.118/98.

4. The first respondent heard the said interlocutory application on various dates however, on erroneous understanding of the issue, the first respondent has passed an order on 24.11.2003 directing the petitioner to pay cost of Rs.15,000/- and posted the case for hearing on 01.12.2003. Thereafter, when the case was taken up on 04.12.2003, it was submitted on behalf of the petitioner that the cost of Rs.15,000/- was an exorbitant and excessive one and therefore, he pleaded for some reduced cost. Further, without agreeing with the said plea made by the petitioner, the first respondent has passed an order directing the petitioner to pay a sum of Rs.15,000/- on or before 08.12.2003 otherwise, the said interlocutory application for restoration of the W.C.No.118 of 1998 would stand dismissed.

5. Aggrieved over the said order passed by the first respondent directing the petitioner to pay an exorbitant cost of Rs.15,000/- on or before 08.12.2003, this writ petition has been filed with the aforesaid prayer.

6. When the case is taken up for hearing today, Mr.S.Silambanan, learned Senior Counsel appearing for the petitioner appeared and argued. Further, the names of the respondent counsel have been shown in the cause list and none appeared for the contesting respondents. However, Mr.M.Elumalai, learned Government Advocate took notice for the respondents 1 and 7.

7. The short issue to be resolved in this writ petition is as to whether the order awarding a sum of Rs.15,000/- as cost against the petitioner by the first respondent in accepting the interlocutory application to restore the W.C., is justifiable or not.

8. Learned Senior Counsel appearing for the petitioner, in this regard would contend that the petitioner is a marginal farmer and he is having a minimum agricultural land where he has been doing agricultural work. Even at the time of filing this writ petition he was 70 years old so at this advanced age, the petitioner had been struggling a lot in doing agricultural work and moreover, the said deceased Palaniammal is not at all the worker of the petitioner at any point of time. Therefore, the very invocation of the provisions of the Workmen Compensation Act itself in this case would not arise at all. Therefore, in order to put forth the case of the petitioner unless a reasonable opportunity of being heard is given by the first respondent in the said W.C. case, the rights of the petitioner would get affected and he would be prejudiced in this regard.

9. Learned Senior Counsel further submitted that only in order to give an opportunity to the petitioner as the said award in the W.C. was an *ex parte* award, the said interlocutory application was filed and if at all, the said interlocutory application is to be allowed on terms only, the first respondent authority could have awarded a reasonable cost, instead the learned authority has passed an order awarding a cost of Rs.15,000/- which is exorbitant and excessive in the year 2003 when comparing with the money value in that time. Therefore, only with regard to the quantum of cost awarded by the first respondent, since the petitioner has got grievance, he has filed this writ petition.

10. I have heard Mr.M.Elumalai, learned Government Advocate in this regard who, would submit that it is the discretion of the authority i.e., the first respondent to award cost depending upon the situation of the case and therefore, it cannot be questioned by filing the writ petition.

11. I have considered the submissions made by the learned Senior Counsel as well as the learned Government Advocate appearing for the respondents 1 and 7.

12. Since the dispute now only rests with the quantum of cost awarded by the first respondent, considering the fact that the petitioner has been reiterating that the deceased was not at all the worker of the petitioner and therefore, in order to prove his case a reasonable opportunity to be given once again. It is a settled proposition that once the party in the proceedings before law court is not able to appear in a particular date and subsequently come forward to and once the said reason is acceptable by the court, even though discretionary power is vested with the judicial or quasi judicial authority to allow such petitions on terms, the said

terms cannot be an exorbitant one.

13. In the case in hand, though the interlocutory application was accepted by the first respondent, he awarded a cost of Rs.15,000/- which, in the opinion of this Court, is definitely higherside in the year 2003 comparing with the money value. On perusal of the impugned order, the first respondent has given reason for awarding the said huge amount and the first respondent has given a reason that after allowing the interlocutory application, the further amount to be questioned by the respondents, who were the petitioners before the first respondent for the continued cause of action, the said amount was given. The said reason given by the first respondent, in the considered view of this Court is not an acceptable one and therefore, on that score such a huge amount, as cost, ought not to have been imposed against the petitioner. Therefore, the impugned order of the first respondent is liable to be interfered with.

14. In the result, the order of the first respondent imposing a cost of Rs.15,000/- on the petitioner herein for allowing the I.A.No.52 of 2003 in W.C.No.118 of 1998 on the file of the first respondent is modified as follows:

(i) That the petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) by way of deposit in the account of I.A.No.52 of 2003 in W.C.No.118 of 1998 on the file of the first respondent, within a period of four weeks, from the date of receipt of a copy of this order.

(ii) On such deposit being made, the first respondent is directed to restore the W.C.No.118 of 1998 and proceed with the same, in accordance with law and dispose of the same, within a period of three months thereafter.

15. With this direction, the writ petition is ordered on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. Deputy Commissioner of Labour
Authority under the Workmen
Compensation Act,
Coimbatore.

2. The Tahsildhar
(Revenue Recovery Authority)
Palani.

+1cc to the Government Pleader, S.R.No.91432

W.P.No.37799 of 2003

KAN(CO)
RRK(13/02/2018)



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